

EXHIBIT 473

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

IN RE: NATIONAL	:	
PRESCRIPTION	:	MDL No. 2804
OPIATE LITIGATION	:	
	:	Case No.
	:	1:17-MD-2804
THIS DOCUMENT RELATES	:	
TO ALL CASES	:	Hon. Dan A. Polster

- - -

Monday, January 7, 2019

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

- - -

Videotaped deposition of TOM NAMETH, held at
the offices of Cavitch, Familo & Durkin,
1300 East Ninth Street, Cleveland, Ohio, commencing at
9:03 a.m., on the above date, before Carol A. Kirk,
Registered Merit Reporter and Notary Public.

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GOLKOW LITIGATION SERVICES
877.370.3377 ph | 917.591.5672 fax
deps@golkow.com

<p style="text-align: right;">Page 82</p> <p>1 here today, what types of orders should be 2 reported to the DEA under the Controlled 3 Substances Act? 4 A. Suspicious orders. 5 Q. Okay. And how would you define a 6 suspicious order? 7 A. One that we could not identify a 8 reason of why it was ordered. 9 Q. Okay. And so my understanding is 10 that you don't believe that the Controlled 11 Substances Act required you to report possible 12 suspicious orders, only suspicious ones, 13 correct? 14 A. Yes. 15 Q. And it was okay that you didn't 16 report an order until after due diligence was 17 done to determine whether it was, in fact, 18 suspicious, correct? 19 A. Yes. 20 Q. Okay. And if that due diligence 21 took a week, it was okay for you to take that 22 time to determine whether the order was 23 suspicious or not before you could report it to 24 the DEA, correct?</p>	<p style="text-align: right;">Page 84</p> <p>1 Interrogatory Number 4, and I think as you aptly 2 pointed out, it includes the words "possible 3 suspicious order," correct? 4 A. Yes. 5 Q. And so with the addition of that 6 word, would you agree that any order that 7 appeared on your 12-month report should probably 8 be listed here in the response? 9 MR. JOHNSON: Objection. 10 A. When you list this as possible 11 suspicious orders, then I guess anything on the 12 report could be provided. 13 Q. Except for the fact maybe that 14 that report didn't actually show specific 15 orders, right, it just showed how much you had 16 ordered in the month? 17 A. Correct. 18 Q. Okay. And so let's look at the 19 information that was requested for each of 20 those. It says, "The date of the suspicious 21 order and the customer's identity and address." 22 Do you see that under a? 23 A. Yes. 24 Q. That -- your report wouldn't</p>
<p style="text-align: right;">Page 83</p> <p>1 A. Yes. 2 Q. And that's how you operated at 3 DDM? 4 A. Yes. 5 Q. Okay. Was there ever an instance 6 at DDM where you found a possible suspicious 7 order and you reported it immediately to the 8 DEA? 9 A. No. 10 Q. Was there ever a time when you 11 reported any order as suspicious to the DEA at 12 any time? 13 A. We did not. 14 Q. Okay. That would include you and 15 anyone else; is that fair? 16 A. To my knowledge, yes. 17 Q. Okay. Is that knowledge partially 18 reflective of what you read in those 19 depositions? 20 A. No. I'm just speaking -- I don't 21 recall -- I mean, you know, not that I'm aware 22 of that we ever reported a suspicious order to 23 the DEA. 24 Q. Okay. Okay. So let's go back to</p>	<p style="text-align: right;">Page 85</p> <p>1 actually show the date of the suspicious order, 2 would it? 3 A. No. 4 Q. Okay. It would just show how much 5 was ordered the month -- in that month, right? 6 A. Yes. 7 Q. Okay. And then b, "A description 8 of said order." Would that information be 9 contained in that report? 10 A. Yes. 11 Q. So like how much was ordered -- 12 the -- 13 A. The description being the type of 14 drug that it was. 15 Q. Would that include NDC number? 16 A. Yes. 17 Q. The name of the drug? 18 A. Yes. 19 Q. Where the drug came from, like the 20 manufacturer? 21 A. That would -- that's by the NDC 22 number you would know what manufacturer. 23 Q. Okay. And it would have like 24 quantity and strength?</p>

<p style="text-align: right;">Page 86</p> <p>1 A. Yes.</p> <p>2 Q. And under c, obviously none of</p> <p>3 them were ever reported to the DEA, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And the due diligence that</p> <p>6 would have been performed on anything that</p> <p>7 showed up on that 12-month report would have</p> <p>8 been the form you sent to the stores; is that</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And would there be any other</p> <p>12 documentation to reflect any due diligence that</p> <p>13 was done?</p> <p>14 A. Not to my knowledge, no.</p> <p>15 Q. Okay. Did you keep files in your</p> <p>16 office or that were accessible to you that</p> <p>17 contained those documents or some sort of a</p> <p>18 running file that would show your due diligence</p> <p>19 over time as it related to a particular store?</p> <p>20 A. Yes.</p> <p>21 Q. And would that just be by store?</p> <p>22 A. It would be by month.</p> <p>23 Q. So it would be by month, not by</p> <p>24 store?</p>	<p style="text-align: right;">Page 88</p> <p>1 reasons why you determined a possible suspicious</p> <p>2 order was not suspicious on that report?</p> <p>3 A. No.</p> <p>4 Q. Would that be reflected in the</p> <p>5 form that you sent to the store?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. Did you ever halt or</p> <p>8 suspend any order as suspicious?</p> <p>9 A. Did not.</p> <p>10 Q. Okay. And, in fact, I believe the</p> <p>11 report you've been talking about, the 12-month</p> <p>12 report, was a retrospective report, correct?</p> <p>13 A. Yes.</p> <p>14 Q. So that report was not -- didn't</p> <p>15 work in a way that would allow you to stop an</p> <p>16 order before it was filled, right?</p> <p>17 A. No. But there was another report</p> <p>18 that was generated that Jill looked at that</p> <p>19 could have fulfilled that.</p> <p>20 Q. Okay. And so the only prospective</p> <p>21 system that was in place at DDM to identify</p> <p>22 suspicious orders, that you know of, was the</p> <p>23 report that Jill looked at, correct?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And would that basically</p> <p>3 consist of you taking the report that was</p> <p>4 printed out and just putting it in a file?</p> <p>5 A. Well, the reports -- those whole</p> <p>6 reports were kept. Usually I indicated on the</p> <p>7 report which ones that I notified the stores</p> <p>8 about, on that report. But then also when the</p> <p>9 report was generated and went out to the stores,</p> <p>10 there was also a follow up that had to make sure</p> <p>11 that those answers were received.</p> <p>12 Q. Okay. And so you would write on</p> <p>13 the physical report that was printed each month?</p> <p>14 A. Yes.</p> <p>15 Q. And was that report only in hard</p> <p>16 copy?</p> <p>17 A. Yes.</p> <p>18 Q. And -- but you retained that</p> <p>19 report?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know whether DDM still has</p> <p>22 those reports?</p> <p>23 A. I can't answer that.</p> <p>24 Q. Okay. Would you have written the</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Okay. And so it wasn't your job</p> <p>2 or responsibility to identify orders that were</p> <p>3 suspicious and should be halted before they went</p> <p>4 out, correct?</p> <p>5 A. Say again.</p> <p>6 Q. It wasn't your job or</p> <p>7 responsibility at DDM to identify suspicious</p> <p>8 orders and then halt them before they went out,</p> <p>9 correct?</p> <p>10 A. Well, you're using the term</p> <p>11 "suspicious order." We didn't -- but if there</p> <p>12 was a suspicious order, then they would have</p> <p>13 gone out. We would have followed up at the back</p> <p>14 side, on the back end.</p> <p>15 Q. They would have gone out but you</p> <p>16 would have followed up later?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you know whether that</p> <p>19 complies with the Controlled Substances Act</p> <p>20 requirement that you have effective controls in</p> <p>21 place to prevent against diversion?</p> <p>22 A. Well, when you look at our -- you</p> <p>23 know, because we're still a closed system, there</p> <p>24 was some conversations whether or not, because</p>

<p style="text-align: right;">Page 98</p> <p>1 a question with regards to the six-week order, 2 that six-week average, she had the ability to 3 come to us and ask questions about it prior. So 4 there was another aspect other than the 12-month 5 average that I could have had an input in. But 6 I don't know if that's what you're after. 7 Q. Sure. Did you ever go and meet 8 with Jill on a periodic basis to discuss any 9 possible suspicious orders? 10 A. No. 11 Q. Have you ever met with Jill at any 12 time to discuss possible suspicious orders from 13 stores? 14 A. As far as her report was 15 concerned? 16 Q. Just in general about -- 17 A. In general? Not to my knowledge. 18 Q. Okay. Let's go to page 12, which 19 is Interrogatory Number 26. And this says, 20 "Please identify for all your subsidiaries, 21 affiliates, et cetera" -- which is probably 22 poorly worded -- "who were involved in 23 distributing opioids or opioid products in the 24 State of Ohio the following: A, board of</p>	<p style="text-align: right;">Page 100</p> <p>1 A. -- and then we would determine 2 whether or not from that point. 3 Q. And then the due diligence would 4 be the last piece? 5 A. Correct. 6 Q. But that was the whole system, 7 correct? 8 A. Yes. 9 Q. Okay. Who is John Gans? 10 A. He's the president of the company. 11 Q. And do you know what role he 12 played in suspicious order monitoring? 13 A. Very little. I mean, John was 14 more or less in charge of the company, not 15 the -- he had really no functionality in 16 pharmacy. 17 Q. Okay. Did he play any role in 18 helping to design DDM's suspicious order 19 monitoring policies and procedures? 20 A. No. 21 Q. Okay. Do you know whether he ever 22 asked to be informed or updated as to what they 23 were? 24 A. I don't believe so.</p>
<p style="text-align: right;">Page 99</p> <p>1 directors; b, senior management; c, person in 2 charge of detecting and preventing diversion; 3 all persons employed by that exact entity 4 involved in detecting and preventing diversion; 5 and e, total number of employees." And then 6 there's "f, address of each facility." 7 So c is "person in charge of 8 detecting and preventing diversion." And if you 9 look on the answer, c lists Pete Ratycz. 10 Do you see that? 11 A. Mm-hmm. 12 Q. Would you agree that he was the 13 person in charge of detecting and preventing 14 diversion at DDM? 15 A. Yes. 16 Q. And I would imagine, based on the 17 testimony that you've given today and what we 18 know, that the two prongs of that were the 19 12-month rolling average report that you were 20 responsible for and the greater than six-week 21 average report that Jill was responsible for; is 22 that fair? 23 A. That was a portion of it, yeah -- 24 Q. Okay.</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Okay. Do you ever remember 2 meeting with him or anyone else in senior 3 management regarding the adequacy of DDM's 4 suspicious order monitoring policies once the 5 opioid epidemic became more apparent? 6 A. Other than Pete? 7 Q. Correct. 8 A. No. 9 Q. Did you and Pete and Jill ever sit 10 down to discuss the adequacy of DDM's suspicious 11 order monitoring policies? 12 A. Not that I recall. 13 Q. Did you ever have any concerns 14 that DDM's suspicious order monitoring policies 15 and procedures were inadequate to identify 16 suspicious orders in advance of them going out? 17 A. No. I don't think that -- you're 18 talking about in advance now? 19 Q. Correct. 20 A. We thought that -- we never had an 21 instance where we had a suspicious order after 22 our due diligence, and so it wouldn't lend us to 23 be suspicious or to have concerns about it. 24 Q. And when you say you never had a</p>

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1 suspicious order, what you really mean is you
 2 never identified an order as suspicious,
 3 correct?
 4 A. Well, we looked at --
 5 MR. JOHNSON: Objection.
 6 A. -- we looked at them all. I don't
 7 think we ever had a suspicious order.
 8 Q. Okay. But do you get my -- in
 9 order for it to be suspicious, someone has to
 10 look at it and say, "That doesn't look right,"
 11 correct?
 12 A. Correct.
 13 Q. Okay. And so your ability to
 14 identify it is only as good as the person who's
 15 looking at the information and the criteria that
 16 they're applying, correct?
 17 A. Correct.
 18 Q. Okay. And I recognize this
 19 document's a little bit long. I'm trying to get
 20 through it so we can all take a break. I
 21 apologize.
 22 All right. D asks for, "All
 23 persons employed by the exact entity involved in
 24 detecting and preventing diversion."

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1 Do you see that?
 2 A. Mm-hmm.
 3 Q. And the answer is, "All pharmacy
 4 employees."
 5 Do you see that?
 6 A. Yes.
 7 Q. And that's what we were talking
 8 about earlier about how you guys relied on the
 9 pharmacy employees, correct?
 10 A. Correct.
 11 Q. Okay. How many pharmacy employees
 12 did you have at a given time? And we talked
 13 about all the levels.
 14 A. Around 180 maybe, in that range.
 15 Q. Okay. So out of the
 16 4,000-some-odd DDM employees, there's only 180
 17 pharmacy employees?
 18 A. Yes.
 19 Q. Does that include the techs and
 20 the floaters?
 21 A. It does not.
 22 Q. Okay. So if you include the --
 23 A. Pharmacists.
 24 Q. -- the regional people, the chief,

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1 the staff, the floater and the techs, how many
 2 would you have?
 3 A. Including regional?
 4 Q. Mm-hmm.
 5 A. Maybe 190.
 6 Q. So only 190 employees?
 7 A. In the pharmacy?
 8 Q. Correct.
 9 A. As far as that handled the
 10 controlled drugs?
 11 Q. I'm just asking how many pharmacy
 12 employees you had that included the regional
 13 supervisors, the chief pharmacists, the staff
 14 pharmacists, the floating pharmacists, and the
 15 pharmacy techs.
 16 A. I would say that number is in that
 17 range, about 190 or so.
 18 Q. Did you know them all on a name
 19 basis?
 20 A. Yes.
 21 Q. Could you have walked into any
 22 store on any given day and known the names of
 23 every single person working in the pharmacy?
 24 A. Yes.

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1 Q. Okay. Did anybody ever indicate
 2 to you that they were concerned that there were
 3 suspicious orders being placed in the DDM
 4 system?
 5 A. No.
 6 MR. MULLIGAN: All right. Now, we
 7 can take a break.
 8 MR. JOHNSON: Okay.
 9 MR. MULLIGAN: Sorry about that.
 10 THE VIDEOGRAPHER: We're going off
 11 the record at 10:36.
 12 (Recess taken.)
 13 THE VIDEOGRAPHER: We're back on
 14 the record at 10:49.
 15 BY MR. MULLIGAN:
 16 Q. Earlier we were talking about the
 17 trust that you place in the pharmacists and the
 18 pharmacy employees at DDM, correct?
 19 A. Correct.
 20 Q. And did you do anything to verify
 21 that the pharmacy level employees were doing
 22 everything they could to prevent diversion,
 23 other than trusting them?
 24 A. Making sure that when the

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1 at it, and if we could answer the reason why,
 2 then, you know, we could justify the order.
 3 Q. Okay. But this -- the sentence
 4 above it says that you "shall inform the DEA of
 5 suspicious orders when discovered," right? And
 6 it doesn't say after doing due diligence, does
 7 it?
 8 MR. JOHNSON: Objection.
 9 Q. So you're getting -- is that
 10 right?
 11 A. It doesn't say when.
 12 Q. It says you have to -- well, it
 13 says, "The registrant shall inform the Field
 14 Division Office of the Administration in his
 15 area of suspicious orders when discovered."
 16 A. Right.
 17 Q. Okay. So you're saying that you
 18 didn't discover a suspicious order when you
 19 looked at the report; it was only after you did
 20 due diligence?
 21 A. Correct.
 22 Q. Okay. But you don't see that
 23 leeway in this text here, do you?
 24 A. I'm looking at it. And when it

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1 says -- are you pointing specifically to orders
 2 of unusual size, that particular aspect of it?
 3 We never identified suspicious orders, so ...
 4 Q. Did you ever have an order of
 5 unusual size?
 6 A. Yes.
 7 Q. Okay. Did you ever report those
 8 orders?
 9 A. Not after we reviewed them, no.
 10 Q. The answer to that question is you
 11 never reported them, right?
 12 A. We never reported a suspicious
 13 order.
 14 Q. Okay. So DDM had unusual --
 15 orders of unusual size, right?
 16 A. In this definition, it doesn't say
 17 what unusual size is. Is unusual size 100
 18 bottles in their definition or not? I mean,
 19 that's very -- you know, you can determine
 20 however you want the number on that. So ...
 21 Q. But DDM defined unusual size to
 22 orders on its own with its report that you
 23 reviewed, didn't it?
 24 A. We looked at higher than normal

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1 orders.
 2 Q. Okay. That's -- is that
 3 substantially different than an unusually sized
 4 order?
 5 A. That's an interpretation.
 6 Q. I mean, if a pharmacy is ordering
 7 ten bottles a month over 12 months and then they
 8 order twenty, that's unusual isn't it?
 9 A. Can be.
 10 Q. That's the whole point of the
 11 rolling average, right?
 12 A. Can be.
 13 Q. Okay. So DDM defined what an
 14 order of unusual size was through its report,
 15 right? And that was a report that you guys
 16 designed to identify suspicious orders, right?
 17 A. Could be.
 18 Q. Okay. Well, did it or not?
 19 A. Again, I -- you know, according to
 20 this, that was our -- our report listed anything
 21 over 99 percent. I don't know what this unusual
 22 size means. Does it determine -- why didn't
 23 they tell me in the -- in this, why didn't they
 24 say -- give me a percentage and something

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1 concrete to work with.
 2 Q. All right. Sir, I'm asking you
 3 very specific questions and I'm happy to talk
 4 about this paragraph for the rest of the day if
 5 you want. But if you can listen to my questions
 6 and answer them, we'll be able to get through my
 7 remaining stack of documents a lot faster.
 8 Okay. So I --
 9 MR. JOHNSON: Objection.
 10 Q. Would you agree with me that the
 11 DEA is saying that a suspicious order is one
 12 that includes orders of unusual size. Would you
 13 agree with that?
 14 A. That's what it says.
 15 Q. Okay. And would you agree that
 16 your rolling 12-month report showed orders of
 17 unusual size by definition?
 18 A. I can't agree to that.
 19 Q. You don't agree? So they were
 20 normal? There was nothing abnormal about those
 21 orders?
 22 A. No. They were -- they could have
 23 been larger than normal, but what's unusual --
 24 it's not unusual to me once I find out the

<p style="text-align: right;">Page 210</p> <p>1 A. On -- in a theft situation, we 2 caught it after the fact. 3 Q. And DDM has never reported a 4 single suspicious order to the DEA or the Ohio 5 State Board, right? 6 A. Correct. 7 Q. And DDM has never identified or 8 reported a single possible suspicious order 9 either, correct? 10 A. Correct. 11 Q. Okay. All right. Let's look at 12 Exhibit -- I think we're on 5. 13 MR. JOHNSON: 4 maybe. 14 MR. MULLIGAN: The last letter was 15 4. 16 MR. JOHNSON: You're right. I'm 17 sorry. 18 --- 19 (DDM-Nameth Exhibit 5 marked.) 20 --- 21 BY MR. MULLIGAN: 22 Q. Okay. So this is an e-mail with 23 an attachment. The e-mail is DDM53874, and the 24 attached document is DDM53912. And I'll just</p>	<p style="text-align: right;">Page 212</p> <p>1 --- 2 (DDM-Nameth Exhibit 6 marked.) 3 --- 4 BY MR. MULLIGAN: 5 Q. This is DDM11545. And this is a 6 letter from Pete Ratycz to the U.S. Department 7 of Justice dated November 13, 2001. 8 Do you see that? 9 A. Yes. 10 Q. Okay. 11 MR. JOHNSON: Can you give him a 12 second to look at it? 13 Q. I mean, if you need time to read 14 it, feel free, but I'm just going to ask you 15 some questions about it. We're going to walk 16 through it. 17 It says, "Dear Sirs: Please be 18 advised on November 6, 2001 a pharmacy 19 technician, Darlene Cottle, was apprehended 20 selling controlled substances to an undercover 21 officer outside our pharmacy located at -- in 22 Bellbrook, Ohio." 23 Do you see that? 24 A. Mm-hmm, yes.</p>
<p style="text-align: right;">Page 211</p> <p>1 tell you, this is an e-mail from after you 2 retired. But I mostly just want to know if you 3 know what this attachment is. It's the -- the 4 attachment is -- the title says "Shipments 5 Greater Than 99 percent of Average Movement." 6 And then it says "Controlled Drugs." 7 And the e-mail says, "Attached is 8 our suspicious monitoring report for the last 12 9 months." 10 Does that look like -- is this the 11 report that you would have reviewed -- I mean, 12 obviously the date is different but ... 13 A. I didn't see it in this form. 14 Q. Okay. 15 A. But, you know. 16 Q. This contains the information that 17 you would have reviewed on your -- on the report 18 that you got? 19 A. Yes. 20 Q. Okay. That's all I've got for 21 that one. 22 Let's do Exhibit 6. 23 Actually, no. Let's skip that 24 one.</p>	<p style="text-align: right;">Page 213</p> <p>1 Q. Do you recall that instance? 2 A. Vaguely. 3 Q. Okay. Do you know who Darlene 4 Cottle is? 5 A. I believe she is a pharmacy tech. 6 Q. Okay. Could you pick her out of a 7 lineup? 8 A. No. 9 Q. Okay. And so if you go down 10 further, it's talking about the drugs she had on 11 her. And it says, "However, a complete audit of 12 the suspected drugs indicate significant 13 shortage." 14 Do you see that? 15 A. Yes. 16 Q. Okay. And so this would indicate 17 that this store -- and I'm not sure what the 18 store number was, but they had a significant 19 shortage of their drugs, which was identified 20 after this pharmacy tech was caught selling 21 controlled substances to an undercover officer 22 just outside the pharmacy, right? 23 A. Yes. 24 Q. Okay. Is that concerning to you?</p>

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Thursday, January 3, 2019

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Videotaped deposition of JILL A. STRANG, held
at the offices of Cavitch, Familo & Durkin,
1300 East Ninth Street, Cleveland, Ohio, commencing at
8:57 a.m., on the above date, before Carol A. Kirk,
Registered Merit Reporter and Notary Public.

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877.370.3377 ph | 917.591.5672 fax
deps@golkow.com

<p style="text-align: right;">Page 106</p> <p>1 an order as suspicious, correct?</p> <p>2 A. No.</p> <p>3 Q. Okay. And I'm assuming, based on</p> <p>4 the testimony you just gave me, that there was</p> <p>5 never a time where you or anyone at DDM stopped</p> <p>6 a -- or suspended a shipment of a controlled</p> <p>7 substance based on a concern that it was</p> <p>8 suspicious, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Do you know whether any DDM</p> <p>11 pharmacist has refused to fill a prescription on</p> <p>12 the belief that it was suspicious?</p> <p>13 MR. JOHNSON: Objection.</p> <p>14 A. I do not.</p> <p>15 Q. You don't know? Do you know who</p> <p>16 would know that?</p> <p>17 A. Peter or Jason.</p> <p>18 Q. Are you aware of the procedures</p> <p>19 that they have in place with their pharmacists</p> <p>20 to, you know, communicate about orders that a</p> <p>21 pharmacist determined were suspicious?</p> <p>22 A. I do not, other than that report</p> <p>23 that Jason uses on a monthly basis to ask about</p> <p>24 that, but on a specific occasion, no, I do not.</p>	<p style="text-align: right;">Page 108</p> <p>1 MR. JOHNSON: Objection.</p> <p>2 A. I do not know that.</p> <p>3 Q. Okay.</p> <p>4 THE VIDEOGRAPHER: Counsel on the</p> <p>5 phone, could you put your phone on mute,</p> <p>6 please.</p> <p>7 BY MR. MULLIGAN:</p> <p>8 Q. Do you know whether DDM -- other</p> <p>9 than that one-month report -- ever analyzed data</p> <p>10 that it collected regarding the movement of</p> <p>11 controlled substances to determine whether</p> <p>12 diversion was taking place?</p> <p>13 A. I do not know.</p> <p>14 Q. You don't know? Okay.</p> <p>15 A. No.</p> <p>16 Q. Were you ever involved in any sort</p> <p>17 of internal audit regarding the sale of opioids</p> <p>18 to identify patterns regarding prescriptions?</p> <p>19 A. Repeat that, please.</p> <p>20 Q. Have you ever been involved in any</p> <p>21 sort of DDM audit or investigation to look at</p> <p>22 opioid sales to determine whether there were any</p> <p>23 patterns that may reflect diversion was taking</p> <p>24 place?</p>
<p style="text-align: right;">Page 107</p> <p>1 I do not -- I'm not involved in that.</p> <p>2 Q. When you communicate with</p> <p>3 pharmacists about, you know, "Hey, was this</p> <p>4 order what you meant to order," would you</p> <p>5 provide them with any sort of forms, or would</p> <p>6 that communication be oral?</p> <p>7 A. Oral.</p> <p>8 Q. Okay. Did you ever send an</p> <p>9 e-mail?</p> <p>10 A. No.</p> <p>11 Q. Any reason why it would be oral</p> <p>12 and not be an e-mail?</p> <p>13 A. Because an e-mail -- I needed an</p> <p>14 answer right then and there so we could pull the</p> <p>15 order, we could reduce the order, and have it</p> <p>16 invoiced and ready to go for the day, because</p> <p>17 we'd be waiting on that.</p> <p>18 Q. So you're in the midst of filling</p> <p>19 this order and you catch this glitch and you --</p> <p>20 everything has to stop until you resolve it so</p> <p>21 you pick up the phone and you call them?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Do you know whether DDM has</p> <p>24 ever identified a pill mill?</p>	<p style="text-align: right;">Page 109</p> <p>1 MR. JOHNSON: Objection.</p> <p>2 You can answer.</p> <p>3 A. No.</p> <p>4 Q. Okay. I know you said that you've</p> <p>5 never identified a suspicious order, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you don't know of anyone at</p> <p>8 DDM who has ever identified a suspicious order,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. Have you or anyone ever identified</p> <p>12 a possible suspicious order that required</p> <p>13 additional due diligence or investigation?</p> <p>14 A. No.</p> <p>15 Q. If someone said to you, "I think</p> <p>16 this order is potentially suspicious," what</p> <p>17 would you do? Would you know what to do? Is</p> <p>18 there a policy or procedure that says what the</p> <p>19 next steps are?</p> <p>20 A. There is not a written policy, but</p> <p>21 I would definitely go to my supervisor and make</p> <p>22 them aware of it.</p> <p>23 Q. And that would be Jason and Pete?</p> <p>24 A. Correct.</p>

<p style="text-align: right;">Page 122</p> <p>1 Number 4. And we've already talked about this</p> <p>2 today. But this says, "Please identify any</p> <p>3 orders you received" -- and "you" I'll just</p> <p>4 represent to you for this document means DDM,</p> <p>5 okay, but I'm going to ask you about you</p> <p>6 specifically.</p> <p>7 It says, "Please identify any</p> <p>8 orders you received that were at any point</p> <p>9 identified as a possible suspicious order." And</p> <p>10 then it says, "For each of those, identify the</p> <p>11 following information." And then the response</p> <p>12 is "None."</p> <p>13 And that's consistent with what</p> <p>14 you've told me, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And so there wouldn't have</p> <p>17 ever been an instance at DDM where anybody had</p> <p>18 to do any due diligence regarding a possible</p> <p>19 suspicious order because none was ever</p> <p>20 identified, correct?</p> <p>21 A. Correct.</p> <p>22 Q. In response to -- well, strike</p> <p>23 that.</p> <p>24 Did Jason or Pete ever contact you</p>	<p style="text-align: right;">Page 124</p> <p>1 this report we generate monthly and we have</p> <p>2 concerns about the way that this particular</p> <p>3 store is ordering controlled substances. We'd</p> <p>4 like to impose a threshold or take some other</p> <p>5 action"?</p> <p>6 A. No.</p> <p>7 Q. Did you ever learn of any issues</p> <p>8 that they identified from that report regarding</p> <p>9 possible diversion or suspicious ordering?</p> <p>10 A. No.</p> <p>11 Q. Okay. So correct me if I'm wrong.</p> <p>12 As far as you know, the two reports that DDM</p> <p>13 uses as part of their process have never</p> <p>14 identified a suspicious order or even a possible</p> <p>15 suspicious order, correct?</p> <p>16 A. Correct.</p> <p>17 Q. If you look at Interrogatory</p> <p>18 Number 5. This asks to, "Identify any persons</p> <p>19 who reviewed or analyzed data regarding the</p> <p>20 distribution and/or dispensing of opioids or</p> <p>21 your opioid products."</p> <p>22 I'm not going to read the whole</p> <p>23 thing. But if you turn to the next page,</p> <p>24 there's just four individuals. It's Tom Nameth,</p>
<p style="text-align: right;">Page 123</p> <p>1 and say, "We've been looking at this one-month</p> <p>2 report and this -- we have some concerns about</p> <p>3 this particular store's ordering habits. We</p> <p>4 would like you to impose a threshold on them."</p> <p>5 MR. JOHNSON: It's really a</p> <p>6 12-month report, isn't it? You're</p> <p>7 referring to the --</p> <p>8 MR. MULLIGAN: Oh. Is it?</p> <p>9 MR. JOHNSON: Yeah. It's a</p> <p>10 rolling 12-month report.</p> <p>11 MR. MULLIGAN: I guess I meant the</p> <p>12 monthly report.</p> <p>13 MR. JOHNSON: Yeah, everybody's</p> <p>14 been calling it different things,</p> <p>15 but ...</p> <p>16 BY MR. MULLIGAN:</p> <p>17 Q. Yeah. So I'm talking about the --</p> <p>18 I'm talking about the report that they generate</p> <p>19 each month that showed the ordering history for</p> <p>20 the prior year; is that correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Was there ever a time where</p> <p>23 either Tom Nameth, Jason Briscoe, or Pete Ratycz</p> <p>24 contacted you and said, "We've been looking at</p>	<p style="text-align: right;">Page 125</p> <p>1 yourself, Jason Briscoe, and Pete Ratycz.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know of anybody else that</p> <p>5 would be involved in analyzing data regarding</p> <p>6 distribution of opioids?</p> <p>7 A. No.</p> <p>8 Q. Okay. And it sounds like your</p> <p>9 analysis would have been limited to, is this</p> <p>10 amount of drugs actually what the pharmacist</p> <p>11 wanted, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Let's go to Interrogatory</p> <p>14 Number 12. And this asks to, "Identify any</p> <p>15 threshold or controlled substance limit and all</p> <p>16 personnel who are responsible for establishing</p> <p>17 or approving thresholds or controlled substance</p> <p>18 limits as well as any overrides or</p> <p>19 modifications."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And the answer is "None." I</p> <p>23 assume that's consistent with your testimony</p> <p>24 where you said that DDM never had any</p>

<p style="text-align: right;">Page 314</p> <p>1 and I know what --</p> <p>2 A. Sorry.</p> <p>3 Q. -- you're doing, and it's okay.</p> <p>4 But we can go back and look at a document.</p> <p>5 Do you remember the document where</p> <p>6 they notified you guys that there was an order</p> <p>7 that was cut, it was reported to the DEA as</p> <p>8 suspicious, and it wasn't shipped, and then they</p> <p>9 said, "Maybe it was a fat finger," right?</p> <p>10 A. Correct.</p> <p>11 Q. So they already reported it to the</p> <p>12 DEA before they asked whether it was a fat</p> <p>13 finger, right?</p> <p>14 A. They cut it.</p> <p>15 Q. Yeah. But you -- if it had been</p> <p>16 you, there wouldn't have been a threshold. You</p> <p>17 would have looked at it, and then you would have</p> <p>18 done some diligence, due diligence, and then</p> <p>19 you -- well, you didn't, because you never</p> <p>20 did -- you would not have reported that to the</p> <p>21 DEA, right?</p> <p>22 A. I did do my due diligence.</p> <p>23 Q. But you didn't ever report</p> <p>24 anything to the DEA?</p>	<p style="text-align: right;">Page 316</p> <p>1 your question.</p> <p>2 Q. Okay. That fat finger one that</p> <p>3 they cut, would you have reported that to the</p> <p>4 DEA?</p> <p>5 A. No, because it would --</p> <p>6 MR. JOHNSON: Objection.</p> <p>7 But go ahead.</p> <p>8 A. No, because it wouldn't -- when it</p> <p>9 came over, it would have been investigated and</p> <p>10 looked at --</p> <p>11 Q. Right.</p> <p>12 A. -- and stopped before it left the</p> <p>13 distribution center.</p> <p>14 Q. Right.</p> <p>15 A. They just automatically cut.</p> <p>16 Q. But they didn't send it either,</p> <p>17 did they?</p> <p>18 A. They automatically cut it. They</p> <p>19 didn't even ask any questions.</p> <p>20 Q. Right. So they cut it, didn't</p> <p>21 ship it, and reported it. You would have</p> <p>22 called, stopped it, but not reported it, fair?</p> <p>23 A. Fair, as an order, yes.</p> <p>24 Q. And you -- because you've never</p>
<p style="text-align: right;">Page 315</p> <p>1 A. I did not.</p> <p>2 Q. Okay. You would identify the fat</p> <p>3 finger situation, fix it or resolve it, work it</p> <p>4 out, but it wouldn't get reported; whereas</p> <p>5 Cardinal reports it, and then after the fact,</p> <p>6 you've got to go and figure out what happened,</p> <p>7 right?</p> <p>8 A. Yes. Probably because, again, we</p> <p>9 know our customers. So our customers are the</p> <p>10 stores, and I'm -- I'm not going to look at it</p> <p>11 as -- I'm going to look at it as "Let's fix</p> <p>12 this" because it was wrong when it came over.</p> <p>13 Q. Okay. And so I'm going back to my</p> <p>14 question I asked you before, which is you would</p> <p>15 agree, based on these documents, that Cardinal's</p> <p>16 reporting system to the DEA was more sensitive</p> <p>17 than DDM's in that they would report more stuff</p> <p>18 than you would?</p> <p>19 MR. JOHNSON: Objection.</p> <p>20 A. They see way more orders than I</p> <p>21 do.</p> <p>22 Q. That's not an answer to my</p> <p>23 question.</p> <p>24 A. But I don't know how to answer</p>	<p style="text-align: right;">Page 317</p> <p>1 reported a single suspicious order to the DEA</p> <p>2 ever, right?</p> <p>3 A. Correct.</p> <p>4 MR. MULLIGAN: Okay. No further</p> <p>5 questions.</p> <p>6 THE VIDEOGRAPHER: The time is now</p> <p>7 2:55. This concludes the deposition.</p> <p>8 Going off the record.</p> <p>9 (Signature not waived.)</p> <p>10 ---</p> <p>11 Thereupon, at 2:55 p.m., on Thursday,</p> <p>12 January 3, 2019, the deposition was concluded.</p> <p>13 ---</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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Page 1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - -

IN RE: NATIONAL	:	
PRESCRIPTION	:	MDL No. 2804
OPIATE LITIGATION	:	
<hr/>		Case No.
		1:17-MD-2804
THIS DOCUMENT RELATES	:	
TO ALL CASES	:	Hon. Dan A. Polster

- - -

Thursday, December 6, 2018

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
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- - -

Videotaped deposition of JASON BRISCOE, held
at the offices of Cavitch, Familo & Durkin,
1300 East Ninth Street, Cleveland, Ohio, commencing at
9:05 a.m., on the above date, before Carol A. Kirk,
Registered Merit Reporter and Notary Public.

- - -

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877.370.3377 ph | 917.591.5672 fax
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<p style="text-align: right;">Page 90</p> <p>1 a monthly basis because there really were not</p> <p>2 that many entries, correct?</p> <p>3 A. Well --</p> <p>4 MR. JOHNSON: Objection.</p> <p>5 A. Yeah. I wouldn't say that we</p> <p>6 didn't take that report seriously or it wasn't</p> <p>7 reviewed in a significant manner. It certainly</p> <p>8 was. The report and the number of examples that</p> <p>9 would populate wouldn't -- does not take a</p> <p>10 terribly long time to work based on the</p> <p>11 infrequency by which a drug family populates.</p> <p>12 Q. From 2006 until last Friday, DDM</p> <p>13 has never had an order from any of its</p> <p>14 pharmacies that it considered suspicious and,</p> <p>15 therefore, reported it to the DEA, correct?</p> <p>16 MR. JOHNSON: Objection.</p> <p>17 A. Yes.</p> <p>18 Q. "Yes" meaning --</p> <p>19 A. Correct.</p> <p>20 Q. -- DDM has never reported one</p> <p>21 single order to the DEA as suspicious from 2006</p> <p>22 until at least last Friday, correct?</p> <p>23 A. That is my understanding, yes.</p> <p>24 Q. Those two reports, pharmacy</p>	<p style="text-align: right;">Page 92</p> <p>1 us, for us then to review their feedback on why</p> <p>2 that order was shipped at the quantity it was</p> <p>3 compared to the last 12 months, and then we</p> <p>4 would make a decision on whether that would be</p> <p>5 resolved or not.</p> <p>6 Q. So from 2006 until -- well, it's</p> <p>7 almost a 13-year period -- based on these</p> <p>8 reports, due diligence analysis, the monthly</p> <p>9 analysis of the pharmacies under the controlled</p> <p>10 substance monitor policy report, the six-week</p> <p>11 average report, the follow-up on the due</p> <p>12 diligence, DDM never identified one single order</p> <p>13 as suspicious, despite the fact it shipped and</p> <p>14 distributed 72 million dosage units of</p> <p>15 hydrocodone in the State of Ohio, correct?</p> <p>16 MR. JOHNSON: Objection.</p> <p>17 A. Yeah, I can't speak to the dosage</p> <p>18 units accuracy, but I can tell you that we've</p> <p>19 not reported a suspicious order.</p> <p>20 Q. Do you have any idea what kind of</p> <p>21 volume DDM has -- has distributed in the State</p> <p>22 of Ohio dosage unit-wise?</p> <p>23 A. I know where I could grab that</p> <p>24 information, but off the top of my head, I do</p>
<p style="text-align: right;">Page 91</p> <p>1 operations, Mr. Nasmith (phonetic) --</p> <p>2 MR. JOHNSON: Nameth.</p> <p>3 Q. Thank you.</p> <p>4 -- Nameth and -- basketball,</p> <p>5 football.</p> <p>6 Those two reports, Mr. Nameth --</p> <p>7 Ms. Strange, was it? Stange? Strange?</p> <p>8 MR. JOHNSON: Strang.</p> <p>9 MR. MOUGEY: Strang. Thank you.</p> <p>10 BY MR. MOUGEY:</p> <p>11 Q. Those two reports, Ms. Strang,</p> <p>12 Mr. Nameth, outside of that description, what</p> <p>13 else did DDM do to fulfill its responsibilities</p> <p>14 under 1301.74 to identify suspicious orders of</p> <p>15 controlled substances?</p> <p>16 A. So it would be that -- that third</p> <p>17 phase where, once Mr. Nameth or myself would</p> <p>18 work that report, if we were to identify that</p> <p>19 followup was necessary, in our view, from the</p> <p>20 store, we would send that form that I've</p> <p>21 described as due diligence explaining why</p> <p>22 they're receiving the form based on that monthly</p> <p>23 report, and then with some instructions on what</p> <p>24 information they would need to provide back to</p>	<p style="text-align: right;">Page 93</p> <p>1 not.</p> <p>2 Q. Would 72 million dosage units in</p> <p>3 the State of Ohio from DDM surprise you from</p> <p>4 2006 to 2014?</p> <p>5 MR. JOHNSON: Objection.</p> <p>6 Q. Hydrocodone?</p> <p>7 MR. JOHNSON: Objection.</p> <p>8 A. I would have to -- to -- again,</p> <p>9 would it surprise me? I'd have to look at other</p> <p>10 information associated with dosage units,</p> <p>11 associated all controlled substance or, further,</p> <p>12 all dosage units of all medications that we</p> <p>13 dispense to see what percentage of dosage units</p> <p>14 we dispense at our retail locations were opioid</p> <p>15 compared to the entire bucket. Forgive my term.</p> <p>16 Q. Sir, did DDM have any part of the</p> <p>17 process you just described to me where it was</p> <p>18 monitoring Schedule IIs like OxyContin in</p> <p>19 conjunction with its own Schedule III</p> <p>20 distribution?</p> <p>21 A. From a distribution standpoint,</p> <p>22 no.</p> <p>23 Q. Okay. So 1301.74, the regs under</p> <p>24 the Controlled Substances Act, you would agree</p>

24 (Pages 90 to 93)

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<p style="text-align: right;">Page 102</p> <p>1 A. And it's not -- you're</p> <p>2 characterizing it as a difficult process, but</p> <p>3 it's not.</p> <p>4 Q. Sure. So that 140-page report,</p> <p>5 30 days -- it could come out 30 days after the</p> <p>6 order was entered, right? So there's 30 days in</p> <p>7 the rearview mirror, correct?</p> <p>8 A. Potentially, yes.</p> <p>9 Q. You've got to go flip through the</p> <p>10 report, you've got to do some manual</p> <p>11 calculations, correct?</p> <p>12 A. Yes.</p> <p>13 Q. No one ever automated those</p> <p>14 calculations from 2006 until 2018 to make the</p> <p>15 calculations, just self-reporting, right?</p> <p>16 A. Excuse me. I think those</p> <p>17 calculations, whether it's Discount Drug Mart or</p> <p>18 any entity, including the DEA, that's difficult</p> <p>19 to create something that is precise that you</p> <p>20 could treat as the truth without somebody taking</p> <p>21 a look at it.</p> <p>22 Q. I'm not asking you that. What I'm</p> <p>23 simply asking you is, instead of bottle count,</p> <p>24 measuring dosage units could have been done with</p>	<p style="text-align: right;">Page 104</p> <p>1 that's likely due to our past performance, in</p> <p>2 that we haven't had issues that would have had</p> <p>3 us take a longer look at the way that we're</p> <p>4 having this approach, again, in its totality.</p> <p>5 Q. Sure. And you've never reported a</p> <p>6 suspicious order to the DEA as required under</p> <p>7 1301.74 in 12 years, correct?</p> <p>8 MR. JOHNSON: Objection.</p> <p>9 A. Correct.</p> <p>10 Q. So maybe saying "We're the gold</p> <p>11 standard and we've never had an issue," you</p> <p>12 recognize as DDM it's your responsibility to</p> <p>13 identify suspicious orders, and no one at DDM</p> <p>14 ever thought about embedding a simple formula</p> <p>15 translating bottle count into dosage units so</p> <p>16 the person reviewing the report could compare</p> <p>17 apples to apples, correct, sir?</p> <p>18 MR. JOHNSON: Objection.</p> <p>19 A. I wouldn't -- I mean, I didn't say</p> <p>20 we were the gold standard. I would say we have</p> <p>21 confidence in the way that we operate. And,</p> <p>22 again, I can't speak to if anybody thought about</p> <p>23 that. I would agree that that hasn't been</p> <p>24 changed since the time the report was first</p>
<p style="text-align: right;">Page 103</p> <p>1 a simple calculation, a simple formula within</p> <p>2 that report, correct?</p> <p>3 MR. JOHNSON: Objection.</p> <p>4 A. I think what you're suggesting is</p> <p>5 maybe the report could be enhanced that would</p> <p>6 make Tom's job or my job easier in normalizing</p> <p>7 the quantity that would have been received on a</p> <p>8 monthly basis.</p> <p>9 Q. Sure. Because measuring bottle to</p> <p>10 bottle to bottle to bottle really isn't a --</p> <p>11 comparing apples to apples, correct?</p> <p>12 MR. JOHNSON: Objection.</p> <p>13 A. It's exposed on the report, so</p> <p>14 the -- the extra layer is a little bit more work</p> <p>15 for those that are reviewing it.</p> <p>16 Q. And over a 12-year period, no one</p> <p>17 ever thought at DDM to embed a simple formula,</p> <p>18 the NDC code with the number of dosage units in</p> <p>19 a bottle, so you could quickly see apples to</p> <p>20 apples, correct?</p> <p>21 MR. JOHNSON: Objection.</p> <p>22 A. I can't speak to if anybody</p> <p>23 thought about that or not. It certainly hasn't</p> <p>24 been implemented in a change. I could say</p>	<p style="text-align: right;">Page 105</p> <p>1 created.</p> <p>2 Q. And no one from DDM ever took the</p> <p>3 time to embed a simple formula translating</p> <p>4 bottle counts into dosage units so the</p> <p>5 individual reviewing that report could compare</p> <p>6 apples to apples, correct?</p> <p>7 MR. JOHNSON: Objection. Asked</p> <p>8 and answered, I believe. Yeah.</p> <p>9 Q. Please answer the question.</p> <p>10 A. Yeah. Correct. And, again, I</p> <p>11 view that as it -- it would make the process of</p> <p>12 reviewing the report slightly easier for Tom</p> <p>13 Nameth or myself.</p> <p>14 Q. Sir, if you'd turn to page 71.</p> <p>15 A. Sure.</p> <p>16 Q. We've already covered this</p> <p>17 generally. I just want to -- specifically on</p> <p>18 page 70, do you see the title Part 1306,</p> <p>19 Prescriptions?</p> <p>20 A. I'm sorry.</p> <p>21 Q. Page 70, bottom of the --</p> <p>22 A. Seventy?</p> <p>23 MR. JOHNSON: Lower left of 70.</p> <p>24 Q. Seventy.</p>

27 (Pages 102 to 105)